

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

<b>ENGINEERING &amp; MANUFACTURING ) SERVICES, LLC, )   Plaintiff, )   ) )   vs. )   ) ) <b>CHESTER J. ASHTON, et al., )   ) )   Defendants. )</b></b>	<b>CASE NO. 1:07CV689</b>  <b>JUDGE CHRISTOPHER A. BOYKO</b>  <b><u>ORDER</u></b>
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**CHRISTOPHER A. BOYKO, J.:**

A review of the docket in the above-captioned case shows Defendants filed their Motion for Summary Judgment (ECF DKT #19) on April 28, 2008, in accordance with this Court's Order entered at the Settlement Conference conducted on March 20, 2008. Plaintiff's Brief in Opposition was due on May 28, 2008. However, on May 29, 2008, Plaintiff filed its Opposition Brief (ECF DKT #20) untimely, along with a Motion (ECF DKT #21) for Leave to File Opposition Brief Instantly. On the following day, the Court, by way of a non-document order, granted Plaintiff leave to file the brief instantly. Defendants filed their Reply Brief (ECF DKT #22) on the date designated by the Court's Order. Thereafter, on June 16, 2008, Plaintiff finally filed its belated Brief in Opposition. (ECF DKT #25).

"[T]he term 'instantly,' when used with reference to legal proceedings, usually means within 24 hours." *St. Bernard v. Shane*, 220 F. 852, 853 (6<sup>th</sup> Cir.1915). Moreover, "[t]he adverb 'instantly' means 'immediately, forthwith, without delay.'" *Norton v. Everhart*, 895 S.W.2d 317, 322 (Sup.Ct.Tenn.1995) (citing *Riphey v. State*, 132 Tex.Crim. 415, 104 S.W.2d 850, 851 (1937); *St. Bernard, supra*; and Black's Law Dictionary 799 (6<sup>th</sup> ed. 1990)).

In the instant case, Plaintiff did not file its Brief in Opposition until seventeen days after the Court granted leave.<sup>1</sup> The brief was filed out of rule, more than two weeks beyond the allowed extension of time. Therefore, Plaintiff's Brief in Opposition to Defendants' Motion for Summary Judgment is stricken.

Furthermore, on June 11, 2008, Plaintiff moved for Leave to Respond to Defendants' Reply Brief. (ECF DKT #23). After the parties completed briefing the issue, but before the Court entered a ruling, Plaintiff filed its Response to Defendants' Summary Judgment Reply Brief. (ECF DKT #28). Plaintiff's Motion for Leave to Respond is denied; and the prematurely-filed brief is stricken. As a consequence, Defendants' Motion (ECF DKT #29) for Leave to File Reply to Plaintiff's Response to Defendants' Reply in Support of Summary Judgment is denied as moot.

The Court will proceed to consider and rule on Defendants' Motion for Summary Judgment in a separate opinion.

**IT IS SO ORDERED.**

**DATE: July 15, 2008**

s/Christopher A. Boyko  
**CHRISTOPHER A. BOYKO**  
**United States District Judge**

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The Court finds it ironic that Plaintiff has attacked the procedural integrity of the City's fire inspection plan for non-compliance with established standards; yet utterly disregarded this Court's procedure and Order allowing the brief in opposition to be filed *instante* — which under any interpretation, means without delay.